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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---------------------------|-------------|----------------------|---------------------|------------------|
| 10/645,193 | 08/20/2003 | Yevgeniy S. Nimon | PLUSP023D1 | 7079 |
| 22434 | 7590 | 03/15/2005 | EXAMINER | |
| BEYER WEAVER & THOMAS LLP | | | WEINER, LAURA S | |
| P.O. BOX 70250 | | | ART UNIT | PAPER NUMBER |
| OAKLAND, CA 94612-0250 | | | 1745 | |

DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) |
|------------------------------|------------------------|---------------------|
| | 10/645,193 | NIMON ET AL. |
| Examiner | Art Unit | |
| Laura S Weiner | 1745 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 11 February 2005.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 19-24 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 19-24 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 19-24 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

Claim Rejections - 35 USC § 103

2. Claims 19-24 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Koksbang (5,487,959) or Momyer (4,001,043) or De Jonghe et al. (4,917,974).

Koksbang teaches a layer for stabilization of lithium anode. Koksbang teaches in column 5, lines 55-60, that an I₂/PVP protective coating or layer is formed on the anode. Koksbang teaches in column 6, lines 13-19, 45-50, that the coating protects the anode from reaction with the lithium because I₂ reacts with lithium to form LiI.

Momyer teaches in column 6, claim 1, a lithium anode. Momyer teaches in column 2, lines 26-46, that a hydrous oxide film forms on the reactive anode when hydrogen peroxide (a strong oxidizing agent) is used.

De Jonghe et al. teaches a lithium anode where a barrier layer is formed on the surface of the lithium anode.

Thus teaching a negative electrode comprising a lithium material and a film coating on the lithium material. There is no evidence showing that the oxidizing agent used to

form the final film coating would give a different film. Momyer teaches using an hydrogen peroxide oxidizing agent to form the film on the lithium anode.

In the event any differences can be shown for the product of the product by process claims 19-24, as opposed to the product taught by Koksbang or Momyer or De Jonghe et al., such differences would have been obvious to one of ordinary skill in the art as a routine modification of the product in the absence of a showing of unexpected results.

In re Thrope 227 USPQ 964; (Fed. Cir. 1985).

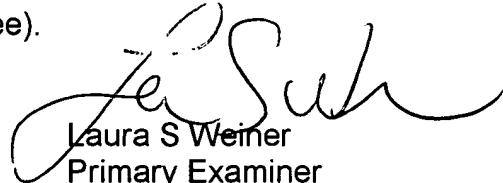
With respect to the product by process claims 19-24, the determination of patentability is based upon the product itself not upon the method of its production. *In re Thrope* 227 USPQ 964; *In re Brown* 173 USPQ 685; *In re Bridgeford* 149 USPQ 55; *In re Wertheim* 191 USPQ 90. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the Examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the Applicants to establish that their product is patentably distinct. *In re Brown* 173 USPQ 685 and *In re Fessmann* 180 USPQ 324.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura S Weiner whose telephone number is 571-272-1294. The examiner can normally be reached on M-F (6:30-4:00).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Laura S. Weiner
Primary Examiner
Art Unit 1745

March 9, 2005